

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0002V

UNPUBLISHED

CECILIA ORTIZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 29, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Tetanus Diphtheria
acellular Pertussis (Tdap) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Martin Conway Galvin, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On January 2, 2019, Cecilia Ortiz filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”) as a result of a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine administered on January 20, 2016. Petition at 1. Petitioner further alleges that her injuries lasted for more than six months. Petition at 4. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 6, 2020, Respondent filed his Rule 4(c) report recommending that compensation be denied, arguing that the onset of Petitioner’s shoulder pain was not

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

within 48 hours of vaccination. ECF No. 29. After the parties briefed the issue, I issued a ruling finding that Petitioner's shoulder pain likely began with the 48-hour timeframe for a Table claim. ECF No. 39 at 2.

On August 29, 2022, Respondent filed an Amended Rule 4(c) report in which he states that he does not contest that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, Respondent states that "[b]ased on the Chief Special Master's fact ruling, and the evidence submitted in this case, DICP will not continue to contest that petitioner suffered SIRVA as defined by the Vaccine Injury Table." *Id.* at 7-8. Respondent further agrees that:

[P]etitioner had no recent history of pain, inflammation, or dysfunction of her left shoulder; the onset of pain occurred within 48 hours after receipt of an intramuscular vaccination; the pain was limited to the shoulder in which the vaccine was administered; and, no other condition or abnormality, such as brachial neuritis, has been identified to explain petitioner's left shoulder pain. 42 C.F.R. §§ 100.3(a), (c)(10). In addition, petitioner suffered the residual effects of her condition for more than six months. 42 U.S.C. § 300aa-11(c)(1)(D)(i). Therefore, based on the record as it now stands and subject to his right to appeal the Findings of Fact, respondent does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act.

Id. at 8.

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master